

September 19, 2002

By Electronic Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Ex Parte Notice

**Re: Applications for Consent to the Transfer of Control of Licenses from
Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast
Corporation, Transferee, MB Docket No. 02-70**

Dear Ms. Dortch:

The Media Bureau ("Bureau") has inquired about the interrelationship among: (1) the merger agreement among AT&T Corp. ("AT&T"), Comcast Corporation ("Comcast"), AT&T Comcast Corporation ("AT&T Comcast") and certain other affiliates (the "Merger Agreement"); (2) the agreement governing the restructuring of Time Warner Entertainment, L.P. (the "TWE Restructuring Agreement"); and (3) the agreement under which AOL Time Warner ("AOL TW") would make its high-speed Internet service available on AT&T Comcast cable systems ("ISP Agreement"). In addition, the Bureau has inquired about the effect, if any, of certain provisions in the Commission's order approving the merger of AOL and Time Warner on the ISP Agreement.¹ Finally, the Bureau has asked the Applicants to provide certain information regarding the status of pending license transfer applications before local franchising authorities.

The following summarizes the interrelationship of the Merger Agreement, the TWE Restructuring Agreement, and the ISP Agreement:

- The Merger Agreement is not conditioned on the ISP Agreement or the TWE Restructuring Agreement. In other words, the AT&T-Comcast merger is permitted to close irrespective of whether the ISP Agreement becomes effective or the TWE restructuring closes.

¹ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd 6547 (2001) ("AOL-Time Warner Merger Order").

- The TWE Restructuring Agreement provides that the closing of the TWE restructuring will be delayed if necessary to wait until the closing of the AT&T-Comcast merger, but only until March 1, 2003. To achieve this result, the TWE restructuring is expressly conditioned on the closing of the AT&T-Comcast merger; *provided, however*, that, if the AT&T-Comcast merger has not closed by March 1, 2003, and all other conditions to the closing of the TWE restructuring have been met or waived, then the condition that the AT&T-Comcast merger shall have closed will be automatically deemed waived by the parties. *See* TWE Restructuring Agreement, Section 11.1(f).
- The ISP Agreement is not conditioned on the closing of the AT&T-Comcast merger. As provided in the TWE Restructuring Agreement, if the AT&T-Comcast merger has not closed by March 1, 2003 and all other conditions to closing the TWE restructuring have been met or waived, then AT&T and AOL TW are obligated at the closing of the TWE restructuring to enter into an agreement, substantially identical to the ISP Agreement, that would govern the provision of AOL TW's high-speed Internet service on AT&T cable systems. *Id.*, Section 9.1(a)(ii).
- The Applicants' obligation to execute the ISP Agreement (or, in the case of AT&T, the corresponding agreement) only arises at the closing of the TWE restructuring. *Id.*, Section 9.1(a)(i). Accordingly, unless the TWE restructuring closes, the Applicants are under no obligation to execute the ISP Agreement.
- Notwithstanding the preceding bullet point, the TWE Restructuring Agreement also provides that AT&T Comcast may elect to execute, and to cause AOL TW to execute, the ISP Agreement following the closing of the AT&T-Comcast merger, but prior to the closing of the TWE restructuring. Accordingly, if AT&T Comcast exercises this right, the ISP Agreement may become effective even if the TWE restructuring does not close. *Id.*

The Bureau also has inquired about the relationship between the ISP Agreement and certain provisions in the *AOL-Time Warner Merger Order*. Specifically, that order provides that "AOL Time Warner shall be prohibited from entering into any agreement with AT&T Corp., tacit or otherwise, that gives any AOL Time Warner ISP exclusive access to any AT&T cable system for the purpose of offering high-speed Internet access service." *AOL-Time Warner Merger Order* ¶ 331. The order further states "that AOL Time Warner shall be prohibited from entering into any agreement with AT&T, tacit or otherwise, that affects AT&T's ability to offer any rates, terms or conditions of access to ISPs that are not affiliated with AOL Time Warner." *Id.* ¶ 332.

As an initial matter, the terms of the *AOL-Time Warner Merger Order* do not apply to the Applicants. Even so, the ISP Agreement does not give AOL TW any exclusive rights to provide Internet service over any cable system nor does it constrain Applicants' ability to negotiate and

reach agreements with other ISPs in the future. This is consistent with Applicants' compelling marketplace incentives to make access to their cable systems available to unaffiliated ISPs under commercially reasonable, customer-friendly arrangements in order to maximize the attractiveness of their Internet offerings to their cable customers and potential customers. Indeed, the Applicants previously have announced a number of agreements with Internet service providers, including AT&T's agreements with EarthLink, NET1Plus and Internet Central, and Comcast's agreement with United Online.²

The Applicants have sought approval for license transfers in connection with the proposed merger from a total of 1,791 local franchising authorities. As of the date of this letter, 98.44% of the franchising authorities have either consented to the transfers or allowed the 120 day review period to elapse without objection. In the case of Comcast, 99.24% of its 660 local franchising authorities have consented or not objected to the transfer; in the case of AT&T Broadband, 97.97% of its 1,131 franchising authorities have consented or not objected to the transfer. AT&T and Comcast are of course working diligently to obtain the remaining local license transfers.

Pursuant to section 1.1206(b) of the Commission's rules, this letter is being filed electronically with the Office of the Secretary. If you have any questions, please contact us.

Very truly yours,

/s/ Betsy Brady

Betsy Brady
AT&T CORP.
1120 20th Street, NW
Suite 1000
Washington, DC 20036

/s/ James R. Coltharp

James R. Coltharp
COMCAST CORPORATION
2001 Pennsylvania Avenue, NW
Suite 500
Washington, DC 20006

cc: Royce D. Sherlock
Simon Wilkie
Cynthia Bryant
Lauren Kravetz Patrich

Roger D. Holberg
James R. Bird
Jeff Tobias
Qualex International

Erin Dozier
William Dever
Patrick Webre

² Moreover, upon the closing of the AT&T-Comcast merger, AT&T and Comcast have agreed to offer the same terms to Microsoft's ISP, The Microsoft Network, that AT&T Comcast has offered to other ISPs. *See Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Dkt. No. 02-70, Applications and Public Interest Statement at 8 n.9 (filed Feb. 28, 2002).